IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1123 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RADABHAI LALJIBHAI SONAGARA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR NITIN M AMIN for Appellant(s) : 1,
Mr L.R. Pujari, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 22/23.10.2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order dated 30.11.1994 passed by the

learned Special Judge, Jamnagar in Special Case No.3/86 whereby the appellant, Rudabhai Laljibhai Sonagara was convicted and sentenced to suffer R.I. For two years and fine of Rs. 500/-, in default, further R.I. for six months in respect of offence punishable under section 5(2)(d) of the Prevention of Corruption Act. The appellant was also sentenced to suffer R.I. for one year for the offences punishable under section 161 of the Indian Penal Code. Both the substantive sentences were ordered to run concurrently.

The facts necessary for disposal of the present appeal are briefly stated hereunder:

2. The complainant-Maheshkumar Jayantilal Kakkad of Dwarka was residing with his mother Manglaben and his father was residing separately from his mother. The father of the complainant, by executing sale deed dated 31.1.1985, transferred an open plot of land in favour of Manglaben. The complainant wanted the said plot to be mutated in the name of his mother Manglaben and hence he has got prepared an application dated 20.8.1985 along with xerox copy of the sale deed and produced them

before Talati-cum-Mantri, Dwarka Nagar Panchayat (the accused) for getting the said plot mutated in the Government record. On receipt of the said application, the appellant-accused told the complainant that the said work would not be done unless payment is made and asked the complainant to see him on the next day. After two days, the complainant again went to the accused and told him that by any means, he wanted to get the work done expeditiously and he was willing to please the accused by making the payment. According to the say of the complainant, the accused demanded an amount of Rs. 100/-. The complainant told the accused to reduce the amount as it was a bit high. The accused refused to do so and insisted for Rs. 100/-. On 21.8.1985, the complainant went to the office of the accused. At that time also the accused asked whether he had got the money, to which the complainant replied in negative. The accused again told the complainant that unless the money was not paid, his work would not be done. Thereafter, the accused told the complainant see him on 21.8.1985 for making the payment in his office with extract of account book (khatavahi) of his mother. Ultimately, the complainant agreed to make the payment. As the

complainant did not want to pay bribe to the accused, he went to the office of the Anti Corruption Bureau, Jamnagar and met Mr G.K. Raval, ACB Inspector on 22.8.1985 and lodged complaint against the accused. Mr Raval, called two panchas and the complaint was read over to them and the panchas put their signatures on the complaint. The complainant and the panchas were introduced to each other. The complainant had produced one currency note of Rs. 100/- and anthracene powder was smeared on the currency note and the currency note was tested under ultraviolet lamp and glowing marks of bluish powder were seen. The experiment was explained to the panchas and to the complainant. The currency note was then put into the pocket of the bush shirt of the complainant and the Investigating Officer, Mr Raval and panch No.1 were instructed to approach the accused for mutation of the plot in the name of Manglaben and if the accused demands, give the accused the tainted currency note of Rs.100/- and on his acceptance, signal to the ACB team. Panch no.1 was told and instructed to hear the conversation between the complainant and the accused and to witness the exchange of the tainted currency note. Preliminary panchnama was then

prepared. All the members of the raiding party proceeded from Jamnagar to Dwarka by the Government jeep and they reached Dwarka at about 3.30 p.m. The vehicle was parked near the shop of one carpenter. The complainant and panch No.1 on foot went to the office of Dwarka Nagar Panchayat. The office of the Talati was closed and they waited upto 6.30. p.m. The Talati (accused) came in the evening and he told the complainant that he had to go for inspection and therefore, the complainant should go at 10.30 a.m. on the next day. The complainant and panch no.1 informed the same to Mr Raval, who prepared panchnama accordingly which was signed by the panchas. On 23.8.1985 (next day) at about 9 a.m. they left for Dwarka. Again, the complainant and panch no.1 went to the office of the accused. As per instructions of the I.O., the complainant sat on a chair opposite to the table of the accused and panch no.1 sat on a bench beside the chair of the complainant. The complainant produced extract of khatavahi of the plot along with the application and xerox copy of the documents. Thereupon the accused, on verifying from the records of his office, made calculation on the reverse side of the application itself and told

the complainant that he has to pay Rs.90.75 as Government dues. As the complainant had not brought any money other than the tainted currency note, he borrowed Rs.100/- from panch no.1 and gave to the accused. At that time the accused demanded the bribe amount of Rs.100/- saying that he should now pay the dues. The complainant then took out the tainted currency note from his bush-shirt pocket and handed over the same to the accused who had accepted it and kept both the currency notes in his right palm. The complainant was offered tea by the accused and told his peon to bring tea. The complainant, on the pretext of showing sympathy to the peon of his old age, went outside and signalled and the raiding party members rushed to the office of the accused. The accused was going to the Nagar Panchayat office which was on the first floor of his office. From the stair case itself, the accused was stopped by Mr Raval introduced himself as P.I. of ACB and necessary formalities - such as experiment of ultraviolet lamp was carried out and the marks of anthracene powder were found on both the hands as also the right palm of the accused and the number of the currency note on which the anthracene powder was smeared which was written in preliminary panchnama,

was also found to be tallying. The tainted currency note, the application dated 20.8.1985 and xerox copy of the sale deed were attached. Receipts were given to the accused with the signatures of raiding officer Mr G.K. Raval and the panchas and second part of the panchnama was completed. Mr Raval had recorded explanatory statement of the accused and also the statements of the peon, Shankarlal Chunilal and Bharat Mangaldas Chandarana and they all left for Jamnagar and the offence against the accused was registered and investigation was carried out and at the end of the investigation charge sheet was filed against the present appellant-accused for the above referred offences. The papers were submitted for the sanction to prosecute the accused to the competent authority and the Deputy District Development Officer has granted sanction vide order dated 28.1.1986. The accused was then arrested and was produced before the Special Court, Jamnagar along with the chargesheet.

3. The learned Special Judge has framed charge Exh.3 for the above referred offences. The present appellant-accused denied the said charges

and claimed to be tried. To prove its case, the prosecution has examined the following witnesses:

(1)P.W.1 Complainant-Maheshkumar J. Kakkad Exh.7

(2)P.W.2 Panch No.1-Manojkumar Nathalal Exh.9

(3)P.W.3 Madhubhai Ashabhai Patel Exh.12

(4)P.W.4 Naranbhai Ukabhai
Exh.13

(5)P.w.5 ACB Inspector, G.K. Raval Exh.18

(6)D.W.1 Talati-cum-Mantri,Mukesh M Raval Exh.21

4. After recording the evidence of the prosecution witnesses was over, the learned Special Judge recorded the further statement of the appellant-accused under section 313 of the Code of Criminal Procedure. In his further statement, the accused denied all the allegations made by the prosecution witnesses. He further submitted that there was due of Rs.139-75 paise to be paid by the complainant and therefore, he had told the complainant that unless the previous dues are paid, the mutation cannot be made. The complainant had refused to make payment of previous dues, and on

22.8.1985 the complainant had told him that he is ready to pay the previous dues. At the time of raid the account was made and as soon as the complainant paid the previous dues, he was going to Nagar Panchayat office for taking the carbon paper and in the meanwhile the raiding party members rushed there and the currency notes of Rs.200/- was recovered from him and he was arrested. So, the money recovered from his possession was not bribe amount but it was a payment made towards the previous dues with respect to the plot.

5. At the end of the trial, on appreciation and scrutiny of the oral as well as documentary evidence like the complaint, panchnama and the application dated 20.8.1985 and other documents, and after hearing the learned Public Prosecutor as well as the advocate for the accused,t he learned Special Judge of the trial court held that the prosecution has established beyond reasonable doubt that the appellant-accused did accept the bribe money from the complainant and, therefore, held the appellant-accused guilty of offence with which he was charged and passed the judgment and order of conviction and sentence as stated in para 1 of this

judgment, which is the subject matter of challenge in the present appeal.

6. I have heard learned advocate Mr Nitin Amin and learned APP, Mr L.R. Pujari for the State at length and have also perused the records in detail.

7. Learned advocate for the appellant-accused submitted that only on assumptions and presumptions, the learned trial Judge, without considering the evidence on record on its true perspectives, wrongly convicted the appellant-accused. He submitted that the appellant-accused had rebutted his burden by examining defence witness Mukesh Manilal Raval and also it has come out from the evidence that the revenue tax was due pertaining to the open plot and while accepting the same and before he could issue receipt and made entries in the relevant register, members of the raiding party along with P.I., Mr Raval came there and caught him and by that he was falsely trapped in the case. It is submitted by the learned advocate that the defence version put forward by the accused is totally believable and supported by the evidence

of the complainant as well as panch witnesses, PW 3 and also by the defence witness who is a Government servant and that the learned Special Judge misinterpreted the above and came to a wrong conclusion. He has also contended that there are major contradictions in the evidence of the complainant as well as the evidence of the panch witness which are proved to be fatal to the case of the prosecution. He also contended that PW 2, panch No.1 Manojkumar turned hostile and he has not supported the case of the prosecution. In spite of that no independent witness was examined though available by the prosecution and when it has come out from the evidence that the complainant is an accomplice, then independent corroborative evidence was required and in this case, no independent corroborative evidence was produced by the prosecution and only relying on the evidence of the complainant, the learned Special Judge wrongly convicted the present appellant-accused. He submitted that it has also come out from the evidence that the complainant was willing to please the accused if his work was done expeditiously and in fact, the complainant himself told the accused that if his work would be carried out expeditiously,

he (the complainant) was willing to please him by making payment. It is further submitted by Mr Amin that when the complainant is an accomplice, independent evidence is required to prove the case of the prosecution and without any corroborative evidence of independent witness, only on the evidence of the complainant, the accused cannot be convicted and the learned Special Judge wrongly convicted the accused and thus committed grave error. It is further submitted by him that though the time and place was not fixed by the accused for receiving the amount, the I.O., Mr Raval immediately rushed to the office of the accused which was very far away and it takes at least 4 hours from Jamnagar to Dwarka to reach the office of the accused at Dwarka, which clearly suggests that the I.O. was keen to trap the accused in collusion with the complainant in a false case. It is also submitted by Mr Amin that even at the second time also exact time was not fixed by the accused for accepting the amount. In spite of that the I.O. decided to go to the office of the accused at 10.30 am. This conduct of the I.O. creates doubt about the fairness of the investigation and so the accused is entitled to get the benefit of doubt

in this case.

8. In support of his argument, Mr Amin has relied on a decision of the Hon'ble Apex Court in the case of ***Tej Bahadur Singh v. State of U.P. (AIR 1990 SC 431)*** wherein in a similar set of facts, the appellant-accused was given benefit of doubt and was acquitted by the Hon'ble Apex Court. Mr Amin has also relied on a decision in the case of ***Mohmoodkhan M Pathan v. State of Maharashtra (1997 SCC (cri.***) 894). That case was similar to the present case, wherein in paras 13 and 14 of the judgment, the Apex Court has held that "*we entertain a reasonable doubt, on the admitted facts of the case, that what the appellant collected from PW 1 could have been the charges which he was lawfully obliged to collect from any person applying for three copies of the sale deeds. In such a situation, it is only just and fair that benefit of the aforesaid doubt is extended to the appellant albeit the last stage of this litigation. We, therefore, upset the conviction and sentence passed on the appellant and acquit him of the offences charged.*"

9. Another decision relied upon by Mr Amin was in the case of ***Kishorchand M Joshi v. State of Gujarat (1985 GLH 103)*** wherein also the Court has observed in para 3 of the judgment that "***Career of a public servant depends on the evidence of two persons and when examined carefully ultimately it would depend upon one person and that one person would be a person who would be a panch witness in the case. Creditworthiness of that person would be most important criteria. One unscrupulous complainant if could find out one person to support him the career of any public servant could be put to an end". The appeal was allowed by the High Court.***

10. Finally, Mr Amin relied on a decision in the case of ***Bharatkumar J Mehta v. State of Gujarat (1982 GLH 249)*** wherein also a similar view was taken by the court, particularly in para 12 of the judgment.

11. On the other hand, learned APP, Mr Pujari submitted that after minutely scrutinising the evidence on record, the learned Special Judge has rightly convicted the accused and there being no

illegality or perversity in the findings arrived at by the trial court, the Appellate Court should not interfere with the judgment and order passed by the learned Special Judge. It is submitted by the learned APP that the learned Special Judge appreciated the evidence in its true perspective and there is no possibility of taking another view than the one which was taken by the learned Special Judge. Therefore, the appeal deserves to be dismissed.

12. It is also submitted by the learned APP that when the evidence is led after a lapse of long time, minor contradictions are bound to be there but as far as “demand and acceptance” is concerned, there is no major contradiction in the evidence and evidence of the complainant is found trustworthy and also corroborative by evidence of PW 3 and also by I.O. who are independent witnesses and so also the appeal deserves to be dismissed.

13. Learned APP, in support of his case, has placed reliance on a decision of the Jharkhand High Court in the case of ***“Gokuleshwar Banerjee v.***

State of Jharkhand (2005 Cr.L.J. 1535) wherein it was held that if minor discrepancies in evidence of prosecution witnesses do not cast any cloud of suspicion to the credibility of prosecution case, no infirmity can be said to have been committed by the competent authority in passing sanction order for prosecution of the accused.

14. In light of the above arguments, the court has minutely scrutinised the evidence as under:

If the defence version is examined, it is seen that in his further statement under section 313 of the Criminal Procedure Code, it is very clearly stated by the accused that legal/revenue dues of Rs.139/75 was due on the open plot and therefore, the accused told the complainant that unless the amount was paid, mutation entry in the name of the mother of the complainant could not be carried out. In reply to this, the complainant told the accused that his (complainant's) mother was not liable to pay any due towards tax on account of previous dues, as it is the liability of the previous owner to clear the previous dues. So, the

complainant was annoyed. It is also stated by the accused that the complainant met him on 22.8.1985 in the evening hours and told the accused that he was ready to make the payment of dues in his office. It is further stated by the accused that on 23.8.1985 the complainant gone to his office with the account book (Khatavahi) and after verifying the records and ledgers, the accused calculated the exact amount due and it is found by the appellant-accused that Rs. 90/70 paise was due towards tax and the remaining amount which was required to be paid was towards other legal/assessment revenue dues (Akar). It is also stated by the accused that the complainant handed over Rs. 200/- towards the legal dues and after accepting the currency notes, he went to the first floor of the Nagar Panchayat office for getting carbon paper. During that time, the appellant-accused was caught by the ACB team and therefore, he was not able to issue receipt of Rs.139.75 paise to the complainant. Now, in light of his defence if the evidence is discussed, it has come out from the evidence of PW 1, the complainant that he was aware that some amount was due towards revenue dues (Akar) of his plot but he did not know actually how much amount was due. It has also come

out from the evidence of the complainant that when he reached the office near the table of the accused, the appellant-accused took out a ledger and placed it on his table. He also admitted that the appellant-accused, after accepting the amount, went to the office of the Nagar Panchayat on the first floor and when he was on the stair case, he was caught by the ACB team.

14.1. PW 3, Madhubhai Ashabhai Patel, in his evidence at Exh.12 stated that he was working as Talati-cum-Mantri during September, 1985 at Surajkaradi, and at the relevant time, he was also incharge of Dwarka Nagar Panchayat. As per the evidence of this witness, he identified the handwritings of the accused on application dated 20.8.1985 and according to him, Rs.90.75 paise was mentioned as amount due towards revenue tax (akar) pertaining to previous year. He also admitted that the writing was of accounts calculated by the appellant-accused. He also stated in his evidence that Rs.90.75 paise was due towards revenue tax, local fund and education cess for the years 1983-84, 84-85 and 85-86. In cross examination, this witness admitted that without verifying Form No.11 he

could not say whether any amount was due towards tax from the previous owner, Bhundia. He also admitted that receipt was always issued after keeping carbon below the original receipt. He also admitted that Talati's office is on the ground floor and Nagar Panchayat's office is on the first floor and for taking contigency items, one has to go to the Nagar Panchayat's office on the first floor and for going to the first floor, one has to use the stair case. He also stated in his evidence that originally, the open plot was in the name of one Urmilaben Bhundia and Pankajkumar Bhundia and the khata No. was 12 and thereafter, the plot was transferred to the father of the complainant.

15. As per evidence of Defence Witness Mukesh Manilal Raval Exh.21, he was serving as Talati-cum-Mantri in Prosita village of Dwarka Taluka since 1989 and he came in the court with the documents which were produced vide Exhs. 22,23 and 24. According to this witness, on the said open plot, the total amount due towards tax was Rs.139.75 paise and as per the evidence of this witness, the said amount was paid on 29.8.1985 and receipt was also issued by the present accused which is produced

at Exh.26. This witness also admitted that contigency items like carbon papers and other stationeries are required to be taken from the Nagar Panchayat's office and they are provided by the said office. He also admitted that Nagar Panchayat is situated on the first floor of the office of the appellant-accused. Nothing has come out from the cross examination of this witness by the learned P.P. This witness is a Government servant and there is no reason to disbelieve his evidence. From the evidence of the above referred three witnesses, it is crystal clear that the legal dues pertaining to the plot yet to be paid were in the name of mother of the complainant. It is to be noted that before making mutation entry, it was required for the Talati to calculate and recover the tax due pertaining to the said property.

16. PW 2, panch No.1-Manojkumar Nathalal Exh.9, in his evidence stated that he had gone with the complainant to the office of the appellant-accused. At that time, the accused, after calculating, demanded the money, but he was not aware as to how much amount was demanded. As far as the conversation part which took place between the

complainant and the accused is concerned, this witness has not supported the case of the prosecution as narrated in the panchnama. So far as the other aspects of the panchnama is concerned, he has supported the case of the prosecution.

17. Learned APP argued that the panchnama is duly proved through the deposition of the I.O. and that the panchnama produced at Exh.10 should be taken into consideration. If this argument is accepted, then it is crystal clear from the evidence that in presence of panch no.1, illegal gratification was demanded by the appellant-accused. In light of this, it is necessary to discuss the evidence of Investigating Officer, PW 5, Mr G K Raval, P.I., ACB at Exh.18. In para 12 of the deposition, this witness stated on oath that after the trap was carried out, panchnama was drawn at Jamnagar ACB Office and later on it was prepared and the panchas were called and got it signed. He admitted in his evidence that ultra violet lamp was **not** used in the office of the Talati at the time of the trap. This admission clearly creates a doubt about the genuineness of the panchnama as it was prepared subsequently in the office of the ACB and

not at the relevant time and at the spot. So the evidence of this panchnama Exh.10 should not be looked into and this evidence clearly suggests that panch no.1, P.W.2 might be right in saying that after calculating the amount pertaining to the open land, the accused demanded the money. As discussed above, the evidence of these witnesses create serious doubt whether the amount which was handed over to the accused by the complainant was towards the legal dues or towards illegal gratification. Further, Exh.10 panchnama has not inspired confidence in light of the evidence of the I.O. and when there is only evidence of the complainant and as discussed above, when the complainant himself was willing to please the accused for getting his work done expeditiously by any means, independent corroborative evidence is required. It is pertinent to note that it has come out from the evidence that during the said incidence of trap, one peon was present but he was not examined. When panch no.1 has turned hostile, it is the duty of the prosecution to examine panch no.2 but for the reason best known to the prosecution, this peon and panch no.2 have not been examined as witnesses.

18. As discussed above, it has come out from the evidence of PW 3 and the defence witness that, there were legal dues pertaining to the open plot and so also doubt is created in absence of any independent witness or any corroborative evidence except the evidence of the complainant whether the appellant-accused has demanded amount of Rs.100/- towards illegal gratification or towards the legal dues.

19. It is submitted by learned APP, Mr Pujari that there is no reason for the appellant-accused to go to the first floor for getting stationery items or carbon papers when the peon was present and the accused could always call for the same through the peon and hence, the version of the accused is not believable and not probable. There is no force in this argument of the learned APP. It is to be noted that as per the evidence of the complainant, he had paid Rs.90/- towards legal dues by borrowing the same from panch no.1 and thereafter he paid Rs.100/-(currency note smeared with anthracene powder) towards illegal gratification. If this story is believed, then also if carbon paper was

available in the office of the accused, he could have immediately issued receipt of Rs.90/- and thereafter he could have put the currency note of Rs.100/- which is alleged to be bribe amount, into his pocket, but as per the evidence on record, it is established that when the accused was caught from the stair case, two currency notes of Rs.100/- were found from his fist and so the version of the defence is more probable that the accused might have gone to the Nagar Panchayat Office for getting necessary stationery. It is a natural tendency of human beings that whenever any amount towards illegal gratification is accepted, he would put such money either into his pocket or table drawer. In this case, it did not happen and so both the currency notes were kept in the right palm of the accused. Documentary evidence of application dated 28.8.1985 – Exhs. 22,23 and 24 also would clearly show that at the relevant time, the amount of Rs.139.75 paise was due including Rs.90.75 paise and so the defence version is probable and the accused was successful in rebutting his burden regarding acceptance of the amount. As discussed above, when the appellant-accused had successfully rebutted the burden, it is for the prosecution to

prove its case beyond reasonable doubt. However, as discussed above, the prosecution has miserably failed to prove its case beyond reasonable doubt for the charges levelled against the accused and thus, the accused is entitled to benefit of doubt.

20. I have considered the arguments of the learned advocate for the appellant and the learned APP for the State from all angles as also gone through the judgment and order passed by the learned Special Judge. As observed earlier, the complainant is an accomplice and his evidence required independent corroboration. The panch wanted to fall in line with the prosecution case and, therefore, if the defence version is probable, it could be said safely that the prosecution did not establish its case beyond reasonable doubt. Under these circumstances, this court is of the opinion that the defence version put forth by the accused is probable and as the defence version is probable, it throws great doubt and the result would be that the prosecution version cannot be accepted. The learned Special Judge has not appreciated the evidence in its true perspective and therefore, the judgment and order passed by the learned Special

Judge is required to be quashed and set aside.

21. For the foregoing reasons, this appeal is allowed. The impugned judgment and order dated 30.11.1994 passed by the learned Special Judge, Jamnagar in Special Case No.3/86 is hereby quashed and set aside. The appellant-accused is acquitted of the offences punishable under section 5(2)(d) of the Prevention of Corruption Act and under section 161 of the Indian Penal Code. The appellant is directed to be released forthwith, if not required in any other case. Bail bonds stand cancelled. Fine, if any, paid shall be refunded. The muddamal article be disposed of in terms of the directions given by the trial court in the impugned judgment.

[M.D. SHAH, J.]

msp